IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15599 of 2024 and
W.M.P.Nos.16995 & 16996 of 2024

M/s P R Earth & Contracts,
Rep.by its Proprietrix
Panjamoorthy Rajalakshmi,
No.1/90, Kudiyana street,
Melapundi, Thiruvarur,
Tamil Nadu-612 804. .. Petitioner

-vs-

The State Tax Officer,
Papanasam Assessment Circle,
Thanjavur, Tamil Nadu. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the impugned assessment order in Ref.No.ZD330523045224T dated 11.05.2023 passed under Section 73 of the CGST/TNGST Act, 2017 and uploaded along with summary of order in DRC-07 for financial year 2021-22 passed by the respondent from the files of the respondent and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.T.N.C.Kaushik, Additional Govt. Pleader (T)

ORDER

An assessment order dated 11.05.2023 in respect of assessment period dated 2021-2022 is assailed in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. The petitioner asserts that she had availed of Input Tax Credit (ITC) based on invoices issued by the supplier. Upon receipt of reminder 2 dated 25.04.2023, it is stated that the petitioner replied on 03.05.2023 pointing out that the supplier recorded the supply belatedly in his returns. As regards the petitioner, it is stated that ITC was availed of on the basis of invoices issued by the supplier.

3. Learned counsel for the petitioner submits that this reply was disregarded while confirming the tax proposal. She also submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondent. By referring to the impugned order, he submits that principles of natural justice were complied with by issuing notice in Form ASMT 10 dated 10.10.2022, intimation dated 14.11.2022, show cause notice dated 20.12.2022 and several notices in respect of a personal hearing. He also submits that the petitioner's reply dated 09.05.2023 was not received.

5. On perusal of the petitioner's reply dated 03.05.2023, it is clear that such reply was not uploaded on the portal but appears to have been dispatched by courier service. Such dispatch appears to have been made on 09.05.2023. It is likely that the courier was not received as on the date of issuance of the impugned assessment order. The impugned assessment order

indicates that the tax proposal pertains to a mismatch between the petitioner's claim for ITC and the availability of ITC as per the corresponding uploaded GSTR 2B. Since the petitioner had endeavoured to reply to the show cause notice and explain that such mismatch was on account of the supplier recording the transaction belatedly, the interest of justice warrants that an opportunity be provided to the petitioner to contest the tax demand on merits, albeit by putting the petitioner on terms.

6. For reasons set out above, the impugned order dated 11.05.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand within a period of two weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

24.06.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

kj

To

The State Tax Officer,
Papanasam Assessment Circle,
Thanjavur, Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J

kj

Writ Petition No.15599 of 2024 and
W.M.P.Nos.16995 & 16996 of 2024

24.06.2024